IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2890 of 2007
Date of Decision:7.9.2007

Pyare Lal and others ....Appellants

Versus

Smt. Rewati and others ...Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri P.R. Yadav, Advocate, for the appellants.

HEMANT GUPTA, J.

The defendants are in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the decree dated 11.8.1997 was found to be null & void and not binding qua the interest of the plaintiff.

The defendant-appellants earlier filed Civill Suit No. 692/1989 titled as “Parmanand Vs. Mahesh etc.” for claiming declaration that Mangal son of Phoosa is not heard of since the year 1954 and therefore, he is presumed to have died and consequently, the plaintiffs are entitled to succeed to the estate of deceased Mangal being his nearest heirs.

In the said suit, the plaintiffs herein were not impleaded as party. In the said suit, the appellants obtained an exparte decree dated 11.8.1997 holding that Mangal son of Phoosa is presumed to have died and the appellants being the nearest heirs of deceased are entitled

to succeed to the estate of Mangal. The said decree became subject matter of challenge by the plaintiffs in the present suit, as the plaintiffs claimed that they are the nearest heirs of deceased Mangal and are thus, entitled to inherit the estate of Mangal. Such suit has been decreed by the learned first Appellate Court holding that from the revenue record and the evidence of the witnesses produced, it is apparent that the plaintiffs are the nearest legal heirs. It has been also found that the defendant could not dispute the pedigree table and the relationship of the parties shown in pedigree table, wherein the plaintiffs are reflected to be the nearer heirs of Mangal than the present appellants. It was, thus, found that the decree obtained by the appellants in respect of the estate of Mangal without impleading his nearest heirs, is not binding on the interest of the plaintiffs.

Learned counsel for the appellants has vehemently argued that in the suit for declaration filed by the appellants earlier, it was pointed out that Mangal went missing in the year 1954. The plaintiffs as daughters of Ganga Sahay son of Daya Ram, cannot claim any right in the property of Mangal, as it was for the plaintiffs to prove that Mangal had died after the commencement of the Hindu Succession Act, 1956 (for short `the Act') which fact alone would give some resemblance of rights on the plaintiffs. It may be noticed that the plaintiffs Imarti and Sarti are the daughters of Ganga Sahay son of Daya Ram, whereas Mangal is son of Phoosa son of Indraj son of Daya Ram. The defendants are sons of Mool Chand brother of the plaintiffs Imarti and Sarti.

In support of his arguments, the learned counsel for the appellants has relied upon **N. Jayalakshmi Ammal and another v. R. Gopala Pathar and another, AIR 1995 Supreme Court 995**; **Darshan**

Singh and others v. Gujjar Singh (dead) by L.Rs and others, AIR 2002 Supreme Court 606; L.I.C. of India v. Anuradha, AIR 2004 Supreme Court 2070 and **Saroop Singh v. Banto and others, AIR 2005 Supreme Court 4407.**

The sole question raised in the present appeal is `whether onus of proof that Mangal is deemed to have died before the commencement of the Act, lies on the plaintiffs or not in the facts of the present case.

In **N. Jayalakshmi Ammal's case (supra)**, the Hon'ble Supreme Court has held that there is a presumption of law that a person is dead if the said person has not been heard of for seven years. The onus to prove that the death took place at a particular time within seven years lies upon the person, who claims a right to the establishment of which such fact is essential. In the aforesaid case, it was the plaintiff who asserted right on the basis of presumption of death.

In **LIC of India's case (supra)**, the Hon'ble Supreme Court considered paras No. 115 and 116 of the Halsbury's Laws of England, which are being reproduced as under:-

> "115. Presumptions of life and death. There is generally no presumption of law by which the fact that a person is alive or dead on a given date can be established, but the question must be decided on the facts of the particular case.
>
> Certain exceptions to this general rule are provided by statute, and, in addition, where there is no acceptable affirmative evidence that a

> person was alive at some time during a continuous period of seven years or more and it is proved that there are persons who would be likely to have heard of him, and that all due inquiries have been made appropriate to the circumstances, there arises a rebuttable presumption of law that he died sometime within that period."
>
> 116. Proof of life or death at a particular time.- He who asserts that a person was alive on a given date, or dead on that date, must prove the fact by evidence, since there is no presumption of continuance of life, and, generally, no presumption of death at a particular time. Where there is insufficient evidence in support of the fact alleged, the party bearing the burden of proof will fail."

Considering the earlier judgments, the Court concluded to the following effect:-

> "If an issue may arise as to the date or time of death the same shall have to be determined on evidence – direct or circumstantial and not by assumption or presumption. The burden of proof would lay on the person who makes assertion of death having taken place at a given date or time in order to succeed in his claim. Rarely it may be permissible to proceed on premise that the death had occurred on any given date before which the

period of seven years' absence was shown to have elapsed."

Issue No. 2 in the present suit is `whether the plaintiffs are the heirs of Mangal son of Phoosa.' Such issue has been decided in favour of the plaintiffs. It is the defendants, who have sought declaration from the Civil Court regarding presumed death of Mangal in the earlier suit. The defendants can succeed only if they are able to prove that Mangal had died prior to the commencement of the Act. As per the evidence on record, Mangal was last seen in the year 1954. The Act came into force on 17.6.1956. Therefore, it was for the defendants, who were asserting death of Mangal prior to the commencement of the Act to prove that Mangal is presumed to have died before 1956.

The challenge in the present suit is to the exparte decree obtained by the defendants in the previous suit. Once, the plaintiffs have proved that they are the nearest heirs of the deceased, any decree obtained by the defendants without impleading the necessary parties is null and void. It is the defendants, who have asserted the civil death of Mangal in the previously instituted suit and, therefore, it is for the defendants to prove the time of death as well.

In view of the above, I do not find any patent illegality or irregularity in the findings recorded by the first Appellate Court, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

07-09-2007 (HEMANT GUPTA)
ds JUDGE